By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_.B. No. \_\_\_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

relating to disclosure of certain information about the cost of instructional materials and digital courseware used by students enrolled at an institution of higher education, and limitations on certain automatic charges for such materials and courseware.

BE IT ENACTED BY THE LEGISLATURE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:

SECTION 1.  Chapter \_\_\_, Education Code, is amended by adding Section \_\_\_\_\_\_\_\_\_ to read as follows:

Sec. \_\_\_\_\_\_.  DISCLOSURE OF CERTAIN AUTOMATIC CHARGES FOR INSTRUCTIONAL MATERIALS AND DIGITAL COURSEWARE. (a) In this section:

"Digital Courseware" means a system of educational content and software designed to support the delivery of all or part of a particular course. The term does not include a learning management platform or any other software system designed to provide support for courses generally.

"Instructional material" means content in any medium or combination of media used or intended to be used for conveying information to a student. The term includes a book, supplementary material, computer software, magnetic media, DVD, CD-ROM, computer courseware, online subscription, streaming video, or other means of conveying content to a student or otherwise contributing to the learning process through electronic means and any package or bundle of such media.

"Open Educational Resource" means a teaching, learning, or research resource that is offered freely to users in at least one form and that either resides in the public domain or has been released under an open copyright license that allows for its free use, reuse, modification, and sharing with attribution.

(b) An institution shall disclose to a student enrolled at the institution as provided by this section an automatic charge for instructional materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, regardless of whether the charge is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution, such as the purchase of a textbook at a bookstore that may be charged to the student's account at the institution.

(c)  For a charge described by subsection (b) that is assessed based on the cost of required or recommended instructional materials or access to digital courseware for a certain course or course section in which the student is enrolled, the institution shall:

(1)  in a prominent location in the institution's course schedule [*under* *the section in statute requiring publication of the course schedule, if applicable*], state or provide an Internet website link to:

(A)  the full amount of the charge;

(B)  if the charge is for instructional materials in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the instructional materials or digital courseware collects and uses student data obtained through a student's use of the instructional materials or digital courseware; and

(C)  any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(2)  itemize the charge separately from any other charges assessed for the course or course section in the institution's billing to the student.

(d)  For a charge described by subsection (b) that is assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on any other basis not described by subsection (c) and which is not an opt-in charge as provided by subsection (e) the institution shall:

(1) only assess the charge if the amount of the charge is included in the institution's tuition or required fees under [*the section authorizing tuition and required fees]* of this code;

(2)  in a prominent location in any written or electronic agreement authorizing the charge, disclose:

(A)  if the charge is for instructional material in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the instructional material or digital courseware collects and uses student data obtained through a student's use of the instructional materials or digital courseware;

(B)  any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(3)  adopt a policy to provide that a student is not assessed the charge for a course or course section for which no instructional materials or digital courseware are used or for which all required instructional materials are generally available at no cost in at least one form to the student, such as open educational resources, free materials created for the course, digital materials which students can access at no charge through the institution's library web site, or other materials generally available to all students enrolled in the course section without additional charges or limitations.

(e)  The requirements of subsection (d) do not apply to a charge that is assessed to a student only on an opt-in basis. For purposes of this subsection, a charge is not considered to be assessed on an opt-in basis if:

(1) the charge is mandatory for all students;

(2) the charge is assessed to a student unless the student affirmatively opts out of the charge; or

(3)  the instructional materials or access to digital courseware for which the charge is assessed:  
 (A) are required for the student to earn the maximum possible grade for a course in which the student is enrolled, such as software required to submit homework or exams; and

(B)  for a charge for instructional materials, the instructional materials may only be legally obtained from the institution or certain vendors specified by the institution.

(f) An increase in tuition resulting from an action under subsection (d)(1) is subject to all requirements of this code that apply to increases in tuition. An increase in a fee or the establishment of a new fee resulting from an action under subsection (d)(1) is subject to all requirements of this code that apply to increases in mandatory fees.

(g)  An institution may enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge described by Subsection (b) to students enrolled at the institution only if:

(1) prior to entering into the agreement, the institution consults with the institution’s student government and faculty senate, or comparable organizations as applicable, concerning the terms, requirements and anticipated benefits of the agreement;

(2) the institution adopts a policy that provides that:

(A) the charge assessed to a student will automatically be removed and, if applicable, promptly refunded, if the student withdraws from the course or course section at any time on or before the last day to withdraw from the course without penalty; and

(B) a student may opt out of the charge at any time during a period beginning no later than when the student enrolls in the course or course section or takes any other action triggering the assessment of the charge, and ending no earlier than the last day to withdraw from the course without penalty;

(3) the agreement provides that the educational materials are made available to the student not later than:

(A) the first day of the semester or term, if the student enrolls in the course or course section at least seven days before the first day of the semester or term, or

(B) the seventh day after enrollment in the course or course section;

(4) the agreement does not provide for a penalty or charge added to price of materials provided under the agreement based on failing to meet a target or quota for a number or percentage of:

(A)  students to whom the charge is assessed; or  
 (B)  courses or course sections for which the charge is assessed; and

(5) the agreement prohibits the entity from engaging in, or authorizing third parties to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected under the agreement, including but not limited to personally identifiable information, location data, anonymized data, and any materials derived therefrom, except as expressly authorized, in each case, in the agreement.

(h)  An agreement authorized under subsection (g) is a public record under *[the state's open records or public information act]*.

(i) An institution may not deny, or enter into an agreement with another entity that would permit the entity to deny, a student access to educational materials for which the student has been, or would otherwise be, automatically charged under subsection (b) based on the student’s refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the student’s use of the educational materials.  
 (j) This section may not be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member.

SECTION 2.  Chapter \_\_\_, Education Code, is amended by adding Section \_\_\_\_\_\_\_\_\_ to read as follows:

Sec. \_\_\_\_\_\_.  IDENTIFICATION OF COURSES OR COURSE SECTIONS REQUIRING ONLY OPEN EDUCATIONAL RESOURCES OR THAT HAVE LOW TEXTBOOK COSTS (a) In any online schedule of courses, the institution shall clearly identify any courses or course sections for which all required instructional materials are open educational resources.

(b) If the institution provides a search function as part of its online schedule of courses, the institution shall provide a clearly-labeled filter for searching for courses or course sections for which all required instructional materials are open educational resources.

(c) The information required in subsections (a) and (b) shall be available at a minimum for use by students during any period when students may register for courses.

(d) If an institution designates in its schedule of courses certain courses or course sections as having low textbook costs or a similar designation, the institution shall, in a prominent location in the schedule, state the criteria for that designation.

(e) In this section, "Open Educational Resource" has the meaning assigned in Section \_\_\_\_ of this code.

SECTION 3.  This Act applies beginning with the 2022 fall semester.